

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5788 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHANKAR RAMJI CHAUHAN

Versus

GUJARAT PUBLIC SERVICE COMM.

Appearance:

MR BP TANNA for Petitioner
MR RJ Oza for Respondent No. 1
MR JR NANAVATI for Respondent No. 2
MR RC KAKKAD for Respondent No. 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 12/04/99

ORAL JUDGEMENT

The petitioner, who at the relevant time, serving as a Stenographer Grade II in the District Court, Jamnagar, has filed this petition under Article 226 of the Constitution of India, making a grievance that the G.P.S.C., respondent no. 1 herein, has not called him to the oral interview, even though he passed the written

test, for the post of Civil Judge (JD) & Judicial Magistrate First Class. It is further the grievance of the petitioner that even though he is much higher in the list, he was not called for interview on the flimsy ground that he does not possess the experience prescribed for member of the staff of Judicial Department of Gujarat, after passing the LL.B. (Spl.) examination. The petitioner, in this petition, has prayed for the following reliefs:

- A) declaring that the action of the GPSC in not calling the petitioner to oral test is illegal, erroneous, arbitrary, unconstitutional and violative of Article 14 of the Constitution and quash and set aside the same;
- B) declaring that the petitioner passes the LL.B. (Spl.) examination held in April/May 1982 on 31.7.1982 the day on which the result is declared;
- C) declaring that petitioner completes two years after passing of LL.B.(Spl.) examination and becomes eligible for oral test;
- D) pending admission, hearing and final disposal of this petition, by way of interim order direct the GPSC to call the petitioner to oral test and in the event the oral test is over, direct the GPSC to constitute the Selection Committee and take the oral test of the petitioner for the post of J.M.F.C. & Civil Judge, J.D.;
- E) pending admission hearing and final disposal of this petition, by way of interim order direct the GPSC to keep one post of J.M.F.C. & Civil Judge, J.D., vacant for the petitioner and in the event of the petitioner succeeding in the petition, appoint the petitioner as Civil Judge, J.D. & J.M.F.C.;

When this matter came up for hearing of admission on 30.10.1985, this Court issued notice to the respondents and made it returnable on 5.11.1985 and permitted direct service. After hearing the respondents, on 16.1.86, this Court issued Rule and made it returnable on 23.6.1986. It is pertinent to note that from the returnable date till the rule was issued, the matter was adjourned on number of times, and it appears that at no point of time, the petitioner has prayed for the interim relief even though petitioner has prayed for interim

relief vide prayer Para-17(D) & (E) of the petition. This court also did not deem it proper to grant interim relief while issuing rule. Even thereafter also no attempt whatsoever has been made by the petitioner to go for hearing of the case. It further appears that no attempt was made to get the matter listed on board for final hearing. Thus, after a lapse of over 18 years, when much water has flown, even if the Court decides to allow the petition, no relief can be granted as the only prayer made in the petition for declaration that he is entitled to be called in the oral interview. It is a matter of common knowledge that for the post of JMFC & Civil Judge (JD), the GPSC used to hold interview and by this time, many many interviews must have been held. It is not on record, whether the petitioner has in fact, appeared subsequently and if yes, what is the outcome, and if no, then what is his explanation for not appearing. Thus, due to passage of time, the cause of the petitioner has become mere academic.

Apart from that, even on merits also, I do not find any substance, even though Mr. Brahmabhatt learned advocate appearing for the petitioner vehemently submitted that for no fault of the petitioner, he was deprived by respondent no. 1 to appear in the oral interview and, therefore, the petitioner is entitled to a heavy compensation.

In order to appreciate the grievance of the petitioner, certain facts are necessary.

In pursuance to the advertisement issued by the GPSC dated 30.9.1984 for recruitment to the post of Civil Judge (JD) & JMFC, the petitioner applied for the same. It is the case of the petitioner that the petitioner is staff of Judicial Department of Gujarat and has been working as such from 18.9.1967 in the District Court, Jamnagar. The petitioner appeared in the examination of LL.B. (Spl.) conducted by respondent no. 2 in the year April/May 1982. The result of the said examination was declared on 31.7.1982, however, the result of the petitioner came to be declared on 19.8.1982 as that is the date mentioned in the mark-sheet issued to the petitioner. It appears that the reason given by respondent no. 2 - i.e. Saurashtra University is that the certificate about the moot-court in so far as petitioner is concerned, was sent late and that is why his result was declared on 19.8.82. In substance, it is the case of the petitioner that there was no fault on his part or on the part of the college and the fault, if any, lies with the University

Mr. PB Chauhan, Deputy Secretary, GPSC, has filed the reply affidavit in the petition. Having gone through the reply affidavit, it is clear that the recruitment to the post of Civil Judge (JD) & JMFC, are governed by the Gujarat Judicial Services Recruitment Rules, 1961. The petitioner being member of the staff of the court subordinate to the High Court, provisions of Sub-rule 3A is applicable in this case, which reads as under:

(3A) The appointments shall be made from amongst candidates who being-

(i) Members of the staff of the High Court or any court subordinate to it;

(ii) Members of the staff working as Assistants in the Legal Section of the Legal Department in Sachivalaya;

(iii) Members of the staff of office of the Government Pleader, High Court, Ahmedabad, and

(iv) Members of the staff of office of the Govt. Pleader, City Civil Court, Ahmedabad:

(a) are not more than 45 years, and

(b) have obtained the LL.B.(Special) degree or qualified for enrolment as advocate and served as such members for a period of not less than five years, including not less than two years after obtaining such degree or qualifying for such enrolment.

Reading the said rule, it is clear that for being eligible for the post of Civil Judge (JD) & JMFC, a member of the staff of the Court subordinate to the High Court shall not be more than 45 years in age and shall have obtained LL.B. (Special) degree or qualified for enrolment as advocate and served as such members for a period of not less than five years, including not less than two years after obtaining such degree or qualifying for such enrolment. A minimum experience of five years of which two years should be after acquisition of LL.B. (Special) Degree is required for being eligible for the

post in question. As stated above, the petitioner even though was appointed as a Section Writer (English) on 18.9.1967, at the relevant time, he was serving as Stenographer (Grade-II) on 21.8.1980. The petitioner has obtained a degree in LL.B. (Special) on 19.8.1982. Thus, on 30.7.1984, i.e. on the last date of the receipt of the applications as per advertisement, the petitioner has not completed 2 years experience after obtaining the LL.B. (Special) degree and, therefore, the petitioner fell short by 11 days. On interpretation of the rules, since the petitioner fell short by 11 days in obtaining eligibility for oral test, the GPSC was justified in not calling the petitioner in the oral interview. Thus, technically the GPSC was justified in insisting for strict compliance of the rules. However, it is the grievance of the petitioner that the GPSC has wrongly considered 19.8.1982 being the date on which the petitioner obtained the degree of LL.B. (Special), as the University declared the result of the said examination on 30.7.1982 for no fault of the petitioner his result was kept in abeyance for which the circumstance have been pointed out in the petition. Assuming that the petitioner is right, but unless the GPSC is pointed out with those circumstances, it would be too much to expect from the GPSC to accept the exact date of passing the LL.B. examination. The GPSC accepted 19.8.1982 being the date of passing the examination on the basis of mark-sheet submitted by the petitioner. The subsequent correspondence made by the petitioner to the GPSC in which in the record of the case will be of no assistance to the cause of the petitioner.

Mr. Brahmabhatt, contended that the petitioner has fared well as can be seen from Annexure-A which is a letter dated 4.10.1985 addressed by the 1st respondent informing the petitioner that the petitioner has attended the qualifying standard fixed by the Commission for the elimination test. In para-12 of the petition, the petitioner has stated that the petitioner has fared very well and even according to the Annexure-A in the mailing list the name of the petitioner is at Sr. No. 9 and, therefore, the petitioner has all the reasonable hopes of getting selected at the oral test. In the affidavit in reply, it has been stated that mailing list prepared by the Commission is always in the alphabetical sequence and, therefore, serial number in the mailing list cannot be said to be a rank obtained in the elimination test. In my opinion, this reply will clearly answer the contention of the petitioner, therefore, no further discussion is necessary. The fact that the petitioner do not possess the requisite experience of two years after obtaining

LL.B. (Special) degree, therefore, he was not eligible for being posted to the post of Civil Judge (JD) & JMFC. In my opinion, the respondent no. 1 - Commission cannot be said to be at fault in accepting the date i.e. 19.8.1982 being the date on which the petitioner passed the examination of LL.B. (Special).

In the result, I see no substance even in the merits of the case, therefore, the petitioner is rejected. Rules is discharged with no order as to costs.

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